THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11219 of 2001

Dated: 21-06-2007

Between:

Smt.A.Narasamma.

..... PETITIONER

AND

The Commissioner of Appeals (ULCA), Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11219 of 2001

ORDER:

The petitioner is aggrieved by the order of first respondent dated 28.01.2001 passed in exercise of his powers under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity). She filed said appeal against the proceedings of second respondent dated 22.09.1990 whereunder the declaration filed by Adla Narasimha Reddy, husband of the petitioner, under Section 6 of the Act was closed on the ground that he had no title over the property in respect of which other persons had filed declarations under the Act.

Land admeasuring 7588 sq. mtrs each in survey Nos.35, 36 and admeasuring 7183 sq.

mtrs in survey No.103 was purchased in 1965 by Adla Swamy Reddy, S/o Ram Reddy, Adla Narasimha Reddy, S/o Ram Reddy, Adla Yadagiri Reddy, S/o Satyanarayana Reddy, Adla Yadi Reddy, S/o Banda Reddy and Adla Narasimha Reddy, S/o Banda Reddy. The petitioner herein is the daughter Adla Swamy Reddy. Her father, two cousins and uncle as mentioned supra filed declarations under Section 6 of the Act, being C.C.Nos.7915, 7918, 8810 and 9928/76. Her husband filed separate declaration, being C.C.No.7912/76, claiming 1/3rd share in the land occupied by him in survey No.36 as well as the land in survey Nos.35 and 103. Her husband claimed right under memorandum of partition executed by/among her father, her cousins and the petitioner herself. After processing the declarations, second respondent determined surplus vacant land in respect of said four other declarants excluding her husband and issued a draft statement under Sections 8(1) along with notice under Section 8(3) of the Act. Having come to know this, she filed two objections - presumably by that time her husband died. First that she is entitled to 1/3rd share in the land comprised in survey Nos.35 and 103 as well as 200 sq. yards in House No.2-2-187. Secondly she objected that the land in survey Nos.35 and 103 remains inundated except on few occasions and that no building activity is permissible thereon and therefore, the same cannot be treated as urban vacant land. In the order dated 20.09.1990, second respondent rejected her contentions placing reliance on the copy of the partition deed dated 01.10.1965 on the ground that when Swamy Reddy was alive on the date of commencement of the Act, he could not have partitioned the properties, and on the ground that as per the master plan land in survey Nos.35 and 103 is earmarked for the purpose of agriculture and therefore, it is vacant land. Feeling aggrieved by said order, she preferred an appeal under Section 33 of the Act before first respondent, who dismissed the appeal.

In this writ petition, the learned counsel for the petitioner
Sri B.V.Bakshi, placed two submissions, which were also alleged before the original authority about which a mention is made supra.

As the entire emphasis is made on partition made by the petitioner's father, this Court summoned the record from the office of second respondent. Sri A.Ramalingeswara Rao, the Special Government Pleader for Urban Land Ceiling has proposed the father of the petitioner. This Court has perused the Partition deed, which is found at page No.213 of the file bearing C.C.No.H2/7912, 7915, 7918, 8810/76 and 9928/76.

A perusal of file would show that the particulars of the land and houses are not conspicuous by the absence of the deed. Secondly under alleged Partition deed the petitioner was given part of the house in cattle shed, six she buffalos and Rs.200/- towards share of Shankar Reddy and Krishna Reddy, sons of Adla Swamy Reddy. After such apportionment, the deed also refers to equal share of land at Amberpet Musi Nala among the three children of Swamy Reddy i.e., the petitioner and her brothers. It is not clear whether the same refers to the property in survey Nos.35 and 103. Secondly as rightly pointed out by the Special Government Pleader, when Swamy Reddy was alive as on the date of coming into force of the Act, the partition could not have been affected. Insofar as the second point is concerned, as a question of fact, it was found that in the master plan land was earmarked for the purpose of agriculture. Therefore, the plea of the learned counsel for the petitioner that the building activity is not permissible under municipal regulations cannot be countenanced. In a matter of this nature, where the petitioner claims a share in her father's properties on the ground that her husband was brought as illatom son-in-law and/or that he was given a share in the memorandum of partition executed by her father, the remedy would be to seek declaration of title in a properly constituted suit in the Civil Court. The authorities under the Act could not have decided disputed questions of title.

The writ petition is devoid of merits and the same is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

21st June, 2007
ghn